



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue
Seattle, WA 98101

Reply To

Attn Of: AWT-121

WA 2302
No Date
5c

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. John P. Donahue, Senior Vice President,
General Counsel & Secretary
Rhodia Inc.
CN 7500
Cranbury, NJ 08512-7500

Mr. John M. Iatesta, Assistant Secretary
Rhone Poulenc Ag Company Inc.
(Formerly Rhone-Poulenc. Inc.)
CN 7500
Cranbury, NJ 08512-7500

Mr. Richard Padden, Member
Container Properties, L.L.C.
1216 14th Court East
Sumner, WA 98390

George S. Goodridge, Assistant Secretary
Bayer CropScience, Inc.
2 T.W. Alexander Drive
Research Triangle Park, NC 27709

Re: Demand for Stipulated Penalties
Administrative Order on Consent for Corrective Action ("Order")
Docket No. 1091-11-20-3008(h)
Former Rhone-Poulenc Inc. Marginal Way Facility
WAD 00928 2302

Dear Sirs:

In accordance with Section 15 of the above referenced Order, the United States Environmental Protection Agency (EPA) is demanding stipulated penalties for multiple failures of Respondents to comply with the Order. This demand for stipulated penalties pertains primarily to Respondents failure to comply with requirements related to the hydraulic control interim measure, but also relates to other failures to comply with requirements of the Order.

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As you are aware, both EPA Headquarters and Region 10 consider corrective action at the former Rhone-Poulenc facility a high priority. An interim measure was required by EPA in March, 2000, in order to control the organic and metals contaminants migrating into the Duwamish Waterway from the facility. Based on an extensive technical review of the October 25, 2002, Interim Measures Construction Work Plan and Addendum 1 submitted on November 22, 2002, EPA concluded that the measures set forth in that document (construction of a subsurface barrier wall and pump-and-treat groundwater extraction system) were likely to provide effective control of the contaminant plumes. EPA approved the Interim Measures Construction Work Plan on December 4, 2002, establishing a compliance date by which construction of the measures specified in the Work Plan was to be completed (July, 2003). EPA's approval also established a performance standard, which allowed flexibility in the placement and pumping rate of extraction wells as needed to maintain a continuous inward gradient within the barrier wall. The approval established a compliance date by which the performance standard was to be met (December 4, 2003). Finally, the approval reserved EPA's right to require further work if the approved measures did not establish or maintain verifiable hydraulic control of the contaminant plumes.

EPA has determined that, despite two previous penalties for violation of the Order, the Respondents have failed to complete work specified under the approved work plans, failed to provide reports required under approved work plans, and failed to meet the performance standard for operation of the approved hydraulic control interim measure. We are particularly concerned by the apparent inattention to operation of the interim measure, as evidenced by the Respondents failure to collect performance data until after Respondents were notified by EPA that penalties were accruing, two months after the date by which the Respondents were to have certified compliance with the performance standard. Even as late as the date of EPA's Operation and Maintenance Inspection (August, 2004), one year after start-up of the groundwater treatment system, key components of the system remain missing (such as the auto-dialer, surge tank, and nitrogen blanket), are not functioning as designed (such as the automated control system), or are simply not being maintained (such as the security fence).

Based upon the information provided by the Respondents, as well as information collected during EPA's August 2004 inspection, stipulated penalties are demanded pursuant to Paragraph 15.1 of the Order. EPA is demanding stipulated penalties totaling \$653,250.00. Specific instances where the Respondents have failed to comply with the Order are set forth in the Enclosure.

In consultation with the EPA Region 10 Office of Compliance and Enforcement and in accordance with the EPA's Hazardous Waste Civil Enforcement Response Policy (December, 2003), EPA has determined that the Respondents are a Significant Non-Complier ("SNC"). By definition, a SNC "are those violators that have caused actual exposure or substantial likelihood of exposure to hazardous wastes or hazardous waste constituents; are chronic or recalcitrant violators, or deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements". As such, EPA will assign this designation to the Facility within EPA's RCRA Info National Database. The designation can be removed once the facility

returns to complete compliance with the Order and RCRA and resolves any penalties assessed.

Pursuant to Paragraph 15.3, all penalties shall be due and payable within thirty (30) calendar days of receipt of this letter. As specified in Paragraph 15.5, penalties shall be made payable by certified or cashier's check to the Treasurer of the United States of America and shall be remitted to:

CHECK ADDRESS

U.S. Environmental Protection Agency
(Region 10 Hearing Clerk)
P.O. Box 360903M
Pittsburgh, Pennsylvania, 15251

Copies of the check and letter transmitting the check shall be sent simultaneously to Christy Brown, the EPA Project Coordinator, at:

U.S. Environmental Protection Agency
Region 10 (AWT-121)
Office of Air, Waste and Toxics
1200 Sixth Avenue
Seattle, Washington 98101

and to the Regional Hearing Clerk at:

U.S. Environmental Protection Agency
Region 10 (ORC-158)
Office of Regional Counsel
1200 Sixth Avenue
Seattle, Washington 98101

If you have any questions regarding this matter, please call Christy Brown at (206) 553-8506, or have your attorney call Jennifer MacDonald at (206) 553-8311.

Sincerely,

Rick Albright, Director
Office of Air, Waste, and Toxics

Enclosure

cc: P. Wold, RCI Environmental
G. St. Amant, Muckleshoot Tribe
B. Maeng, Ecology NWRO
G. Baker, NOAA
D. Blount, Landye Bennett Blumstein LLP
R. Brown, Brown, Reavis & Manning PLLC
C. Blumenfeld, Perkins Coie
G. DuPuy, Geomatrix Consultants

Demand for Stipulated Penalties
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1. **Failure to comply with the approved work plans.** The Interim Measures Construction Work Plan ("IM Construction Work Plan"), approved on December 4, 2002, includes specifications for construction of the groundwater extraction and treatment system. As documented in EPA's Operation and Maintenance Inspection (August 17 and 18, 2004) and the as-built diagrams and other documents provided by the Respondents on September 24, 2004, the groundwater extraction and treatment system does not conform to the approved specifications. Of particular concern are the failure to install a surge tank and nitrogen blanket, the failure to install an auto-dialer which would alert off-site personnel in the case of an alarm, and the unapproved installation of an open-top unit for management of investigation-derived wastes containing volatile constituents. In addition, the Respondents did not install a data collection device as specified in the approved IM Construction Work Plan until February 13, 2004, nearly two weeks after the Respondents were notified that penalties were accruing, and over two months after the date by which the Respondents were to have certified compliance with the performance standard (December 4, 2003).

Specifications for the Programmable Logic Controller (PLC) and data recorder are found in the approved IM Construction Work Plan. Further specifications regarding the PLC are set forth in the approved Barrier Wall Evaluation Report submitted by Geomatrix Consultants on September 19, 2003. The approved documents require, among other things, that the PLC will obtain water level information every 15 minutes in order to operate the groundwater extraction system, that the processor memory shall be permanent regardless of power disturbances and have a minimum retention time of six months, and that the system shall operate on battery power for a minimum of 20 continuous hours in the event of a power failure.

Based on the information provided by the Respondents in the May 7, 2004, Answer to Request for Information and the supplemental information provided on May 28, 2004, the PLC and data recorder used to demonstrate compliance with the performance standard do not meet the approved specifications. Data have not been obtained or retained as required by the approved work plans. The water level data provided for the period from February 13, 2004, through April 15, 2004, are presented as "min", "max", and "average over period" in hourly intervals, rather than direct readings every 15 minutes. The data sheets indicate that "data prior to ~1025AM on 3/5/04 was converted using the prior calibration. Data presented here has been corrected to the current calibration." Raw data are not included for either the hourly readings, or for any data collected prior to recalibration. The supporting information provided by the Respondents on May 28, 2004, indicates that raw data cannot be retrieved from the recorder. This

information also indicates that basic control information, including the 72-hour average water levels and setpoints calculated by the PLC are not stored or recorded. The information provided by the Respondents also documents a power failure of twelve days duration (March 24 to April 5, 2004), during which data were not recorded.

It is not possible for EPA to verify whether the Respondents are in compliance with the performance standard based upon a review of the data provided by the Respondents. It is also not possible for EPA to verify the fundamental performance of the groundwater extraction system (e.g. whether the PLC is correctly starting and stopping the extraction pumps). Data must be collected and retained as required by the approved work plans so that the performance of the interim measure is documented and can be verified.

Construction of the approved groundwater extraction and treatment system was to have been completed within one hundred and eighty days of December 4, 2002, the date of EPA's approval of the IM Construction Work Plan. Stipulated penalties for failure to construct the approved system are found in Paragraph 15.1(A) of the Order. Penalties are being assessed from September 12, 2003, the date Respondents certified that construction was completed in accordance with the approved Work Plans, until August 18, 2004, the date of EPA's inspection documenting noncompliance.

Penalties were calculated as follows:

Days 1-7 (\$500 x 7): \$3,500.00

Days 8-180 (\$1,000 x 173): \$173,000.00

Penalties are hereby demanded in the amount of \$176,500.00.

2. **Failure to comply with the requirement to certify documents.** Paragraph 14.2 of the Order requires that "any notice, report, certification, data presentation or other document submitted by the Respondents pursuant to the Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning the Respondents compliance with any requirement of the Order" be certified by a responsible corporate officer or duly authorized representative. Paragraph 14.3 of the Order sets forth the language to be used when certifying documents submitted to EPA. As noted above, the March 18, 2004, letter stating that Container Properties L.L.C. was in full compliance with the performance standard, was not certified in accordance with the requirements of the Order. Additionally, the Respondents' Answer to Request for Information, dated April 21, 2004, was not certified in accordance with the requirements of the Order. The Respondents were reminded of their obligation to certify these documents in the technical meeting held on May 21, 2004. EPA has not yet received certifications for these documents.

Stipulated penalties for failure to properly certify documents are found in Paragraph 15.1(D) of the Order. Penalties for failure to certify documentation of compliance with the performance standard are being assessed from March 18, 2004 until the date of this penalty demand. Penalties for failure to certify the

Answer to Request for Information are being assessed from April 21, 2004 until the date of this penalty demand.

Penalties were calculated as follows:

Documentation of compliance with performance standard:

Days 1-7 (\$250 x 7): \$1,750.00

Days 8-21 (\$500 x 14): \$7,000.00

Days 22-180 (\$1,000 x 159): \$159,000.00

Answer to Request for Information:

Days 1-7 (\$250 x 7): \$1,750.00

Days 8-21 (\$500 x 14): \$7,000.00

Days 22-180 (\$1,000 x 159): \$159,000.00

Penalties are hereby demanded in the amount of \$335,500.00.

3. **Failure to conduct sampling in accordance with the approved sampling plan.** The approved Interim Measures Performance Monitoring Plan ("IM Monitoring Plan"), dated June 3, 2003, specifies the wells to be sampled quarterly for water quality parameters.

The Round 21 groundwater monitoring event included collection of samples from EX-3. Field parameters were not stabilized prior to sample collection as required by the IM Monitoring Plan.

The Round 22 groundwater monitoring event reports that a sample was collected from a valve inside the building, identified as "EX-3", however, the field notes for this event indicate that the field parameters were not stabilized prior to sample collection as required by the Quality Assurance Project Plan. No sample was collected for monitoring well MW-29. The field notes also document that one sample container was collected from monitoring well MW-42 without stabilizing the field parameters.

The Round 23 groundwater monitoring event did not include analysis of samples from EX-3. The field notes for this event state: "Note: Sample was taken from Extraction System valve for EX-3 (inside building), so parameters were not stabilized before sampling." An additional note on the groundwater sampling log states: "Note: Sample was collected at valve labeled "EX-3", but origin of sample was actually unknown, as per conversation w/ JDL on 3-17-04. => Sample was thrown out. 3-31-04".

The Round 24 groundwater monitoring event did not include analyses of samples from EX-3 nor for monitoring well B1A. The report for this monitoring event states "The groundwater sample from EX-3 was not collected because EX-3 was temporarily shut down during the period of sample collection. The groundwater sample from B1A was not collected because the dedicated pump was not functioning."

Stipulated penalties for failure to complete field work in a manner specified in the

approved Work Plan are found in Paragraph 15.1(A) of the Order. Penalties were calculated as follows: Seven separate instances of failure to complete field work in a manner specified in the approved workplan (7 x \$500): \$3,500.00.

Penalties are hereby demanded in the amount of \$3,500.00.

4. **Failure to provide notification of sampling events.** The first Paragraph 8.2 of the Order requires that the Respondents notify EPA and Ecology of all sampling events at least ten (10) days prior to each sampling event. Notice of the Round 24 monitoring was dated June 11, 2004, and was received by EPA on June 16, 2004. The Round 24 groundwater monitoring event occurred on June 15th through 17th, 2004. This notification was not provided by the designated Project Coordinator as specified by the Order.

Stipulated penalties for failure to provide adequate notice of sampling events are found in Paragraph 15.1(C) of the Order. Penalties were calculated as follows:
Days 1-6 (6 x \$250): \$1,500.00

Penalties are hereby demanded in the amount of \$1,500.00.

5. **Failure to include information in Progress Reports.** The approved IM Construction Work Plan, as well as the Order, requires that progress in implementing the Interim Measure will be described in the monthly Progress Reports required by the Order. The IM Construction Work Plan specifies that the Progress Reports will include activities completed, anticipated activities for the following month, and other pertinent information, and states that all equipment failures or problems will be reported (pages 6-2 and 6-6). The information submitted by the Respondents on May 7, 2004, documents two system shutdowns (October 23 to November 18, 2003, and March 24 to April 5, 2005) which were not documented in the Progress Reports. This information also documents a resurveying effort conducted in February, 2004, resulting in a new "basis" for the reported water level elevations at the Facility. The resurveying effort was not reported in the Progress Reports, nor has EPA been provided with any documentation explaining the rationale for resurveying the monitoring wells.

Stipulated penalties for failure to report these actions are found in Paragraph 15.1(C) of the Order. Penalties were calculated as follows: Four separate submittals of progress reports of unacceptable quality (4 x \$250): \$1,000.00.

Penalties are hereby demanded in the amount of \$1,000.00.

6. **Failure to provide a copy of all reports of discharges at the time required.** The approved IM Construction Work Plan requires that EPA be copied on discharge monitoring reports required by "KCDNR" (King County Department of Natural Resources). Discharge reports were provided to KCDNR on July 14, 2003, October 15, 2003, December 8, 2003, and March 6, 2004. Copies of these reports were provided to EPA on April 15, 2004.

Stipulated penalties for failure to provide documents at the time required are

found in Paragraph 15.1(B) of the Order. Penalties were calculated as follows:
Four separate late submittals of discharge reports (4 x \$500): \$2,000.00.

Penalties are hereby demanded in the amount of \$2,000.00.

7. **Failure to maintain required operating records.** The approved IM Construction Work Plan specifies that the results of inspections will be recorded in the treatment plant logbook. Page 6-2 of the approved Work Plan specifies that the groundwater treatment system will be checked onsite twice per month for the first six months after commissioning the treatment system, after which inspections may be reduced to once per month, depending on proven system reliability. Page 6-3 of the approved Work Plan specifies that each inspection will be logged in the treatment plant logbook. Attachment 2 of the April 21, 2004, Answer to Request for Information states that formal operating and maintenance logs and inspections were not documented for onsite operations from the summer of 2003 to April 2004.

Stipulated penalties for failure to maintain operating records are found in Paragraph 15.1(D) of the Order. Penalties were calculated as follows:
Fifteen inspections required between August 2003 and April 2004 for which operating records were not recorded (15 x \$250): \$3,750.00.

Penalties are hereby demanded in the amount of \$3,750.00.

8. **Failure to maintain site security.** Page 6-3 of the approved Work Plan specifies that general inspections and maintenance will be performed during the scheduled site visits (twice per month for the first six months after commissioning the treatment system, after which inspections may be reduced to once per month, depending on proven system reliability). Page 6-3 of the approved Work Plan states that each inspection will be logged in the treatment plant logbook, that maintenance needs will be recorded in the logbook, and that the final action taken for maintenance requests will be noted in the logbook. The Treatment System Inspection Logs provided for April, 2004, in Attachment 4 of the April 21, 2004, Answer to Request for Information, documents the need for maintenance to the security fence on April 7, 2004, April 14, 2004 and April 28, 2004 ("temp fence gone on east side of site at (2) locations", but does not document that repairs were ever made. At the time of EPA's inspection on August 17 and 18, 2004, large gaps were noted in the fence.

Stipulated penalties for failure to conduct required maintenance in a timely manner are found in Paragraph 15.1(A) of the Order. Penalties were calculated as follows:

Days 1-7 (7 x \$500): \$3,500.00

Days 8 – 133 (126 x \$1,000): \$126,000.00

Penalties are hereby demanded in the amount of \$129,500.00.

9. **Failure to submit a required document on time.** Pursuant to Table 7-1 of the approved IM Construction Work Plan, a draft Operations and Maintenance Plan

("O&M Plan") was to be submitted to EPA within 60 days after commissioning the groundwater extraction and treatment system. The groundwater extraction and treatment system began operation on August 4, 2003. A draft O&M Plan was therefore due to EPA no later than October 3, 2003. The O&M Plan was submitted to EPA by the Respondents on April 1, 2004. A cursory review of the draft O&M Plan indicates that it does not include all of the information specified in the approved IM Construction Work Plan. EPA is preparing comments on the draft O&M Plan. Stipulated penalties for failure to timely submit the draft O&M Plan are not being demanded at this time, however, EPA reserves the right to demand stipulated penalties for lack of timeliness and/or quality of this or any future submittals.